IN THE MATTER OF ARBITRATION
BETWEEN

Lyon County, Marshall, Minnesota	)	**Interest Arbitration Deputies Bargaining Unit**
	)	
	)	**-and-**
	)	**BMS Case No.: 05-PN-1168**
	)	
Law Enforcement Labor Services, Inc., Local No. 229	)	**February 22, 2006**

APPEARANCES

For Lyon County

Susan K. Hansen, Attorney, Frank Madden & Associates, Plymouth, Minnesota
Joel C. Dahl, Lyon County Sheriff
Robert Fenske, County Commissioner
Steve Ritter, County Commissioner-Chair
Thomas Steffes, Assistant to County Administrator
Loren Stromberg, County Administrator

For LELS Local No. 229

Terry Herberg, Business Agent, LELS
Eric Wallen, Union Steward
Tony Rolling, Union Steward

JURISDICTION OF ARBITRATOR

Law Enforcement Labor Services, Inc., Local 229 (hereinafter referred to as the "Union") is the certified bargaining representative for the Essential Licensed Employee Unit in the Sheriff's Department employed by Lyon County (hereinafter referred to as the "County" or "Employer.") The Union represents nine employees in the job classifications of Deputy and Investigator. The Union is the only organized employee group in the County. All the other County employees are non-union.

The County and Union are parties to an expired collective bargaining agreement. That agreement expired December 31, 2004. The parties participated in negotiations for a successor agreement but were unable to resolve several issues. As a result of the impasse, the Union requested that the Bureau of Mediation Services (hereinafter "BMS") certify the matter to interest arbitration. The BMS issued its certification on August 3, 2005. The parties were required to submit their final positions in the form of the contract language. The parties submitted statements of their final positions and the BMS notified the undersigned arbitrator of the issues to be resolved. On August 3, 2005 the BMS determined that the following items were ready for arbitration pursuant to M.S. 179A.16, subd. 2 and Minn. Rule 5510.2930:

1. Duration - What Should The Length Of The Contract Be?
2. Wages - What Should The Wages Be for 2005? - Appendix A
3. Wages - What Should the Wages Be for 2006, If Applicable?- Appendix A
4. Court Time - What Should the 2005 Court Time Be? - Article X
5. Call Back - What Should The Call Back Pay Be 2005? - Article XI
6. Subcontract - Should the Right To Subcontracting Be Deleted From the Contract? - Article XII
7. Holidays - Should Columbus Day Be Deleted and Replaced With A Floating Holiday? - Art. XII
8. Insurance - What Should the Employer's Rate of Contribution Be If Applicable to the Year 2006? - Article XXI.
9. Shift Differential - Should There Be A Shift Differential, If Yes, What Would The Rate Be? - New

The parties selected the undersigned arbitrator to be the sole arbitrator from a panel provided by the BMS. The parties selected January 6, 2006 as the date of the hearing in this matter. The hearing was convened on January 6, 2006, at 10 a.m. in the Commissioner's Room at the Lyon County Government Center, 607 West Main Street, Marshall, Minnesota. The parties were afforded a full and fair opportunity to present evidence and arguments in support of their respective positions. After some discussion, the parties agreed to submit post-hearing briefs rather than closing arguments. Pursuant to statute and agreement of the parties, post hearing briefs were timely postmarked on January 20, 2006. The Union's brief was received by the arbitrator on January 21 and Employer's brief was received on January 23, 2006, after which the record was closed and the matter taken under advisement.

ISSUE NO 1: DURATION - ARTICLE XXVII

Both the Employer and the Union submitted final positions for a two year agreement.

AWARD:

Article XXVII shall read as follows: **"This AGREEMENT shall be effective as of January 1, 2005, and shall remain in full force and effect until the 31st day of December 2006."**

ISSUE NO. 2: WAGES FOR 2005 - Appendix A

Union

The Union requests a 3% general increase in wages for 2005 as well as a 4% increase to the merit ranges of the wage scale. The Union's position with regard to the wage increase for 2005 is based on the following arguments:

1. There is no pattern of settlements in Lyon County because all other county employees are non-union and must take whatever the Employer determines to be an appropriate increase.
2. The Employer's offer of a 4% increase to the performance merit grid will benefit only those deputies at the top of the scale in 2005.
3. The Employer is in compliance with the Pay Equity requirements imposed upon it by state law and will remain in compliance in 2005 and 2006 under either proposal.
4. The Employer paid the second highest wage rate in 2003 among counties within Region 8 but fell to third following the 0% wage increase in 2004.
5. The average increase among counties in Region 8 with all but one county settled is 4.2%. In addition, counties within Region 8 provided an average increase of between 2.6% and 3.5% step increases. Combined deputies within Region 8 received an average increase of 6.8% to 7.7% in 2005.
6. In 2004, the average merit increase for the Employer's ten deputies was 3.4%.
7. It will take a 3% general increase to compete with the average increases in the comparable counties.
8. The Employer has the ability to pay. It is very healthy financial condition

according to the 2003 Financial Statement.

9. The cost of the Union's proposed 3% general increase would be $14,435 in 2005.
10. The Union's proposed 3% general increase is certainly justified by the Consumer Price Index.

Employer

The Employer requests a 0% general increase in wages for 2005 and a 4% increase in the merit ranges of the wage scale. In support of its 2005 wage proposal the Employer made the following arguments.

1. The Employer's 2005 final position with respect to the performance merit range and general wage increase is identical to that established for all other County employees.
2. The Employer has historically maintained a uniform pattern of increases to the performance merit ranges and general wage increases. The pattern dates back to at least 1996.
3. The 2005 and 2006 compensation package for non-union employees has been set.
4. Employees are eligible for merit increases based on their performance in both 2005 and 2006. This reflects the County's philosophical focus on rewarding employees for merit-based performance rather than providing employees with automatic general wage increases on the basis of continued service.
5. The Employer's final position for 2005 and 2006 results in wages for deputies that are above the average of the comparison group.
6. The Union's claim that the Employer has significant financial resources to pay the wages it requested ignores reductions in state aid to the County during 2003 and 2004; roll-up costs to the County of any wage increase including payroll taxes and PERA and FICA contributions; merit increases and the actual and significant costs of additional compensation and benefits that are provided to unit members such as health insurance.
7. If the Union's position is awarded it will create a significant labor relations problem for the County. Other groups will organize, demand higher wage settlements in bargaining and hastily proceed to interest arbitration based on the belief that they have nothing to lose and everything to gain. It is also a guarantee that the unit will continue to proceed to arbitration based on a belief that they will get something beyond the County's uniform wage pattern.
8. The Union's Consumer Price Index argument ignores that as part of the County's merit pay system, employees are eligible to receive merit pay increases ranging from 2% to 8% per year. The average merit pay increase for deputies is 4.8% in 2005 and 4.6% in 2006.
9. The primary factor relied upon by interest arbitrators in deciding a wage issue has been internal consistency.
10. The Union's pay equity argument fails to recognize that the effect on pay equity compliance of an award of the Union's position on wages is unknown. Even if an award of the Union's position would not place the County out of pay equity compliance, it will change the pay relationships between Sergeant and

Investigator classifications and the Sergeant and Deputy classifications and alter the symmetry of the County's uniform merit-based compensation system.

11. The Lyon County Deputies are paid extremely generous wages. Lyon County deputies are paid well above the average of the comparison counties and the County's uniform compensation system pattern results in wages that are extremely competitive.

AWARD:

The Employer's position is awarded.

RATIONALE:

M.S. Section 179A. Subd. 7 states:

"In considering a dispute and issuing a decision, the arbitrator or panel shall consider the statutory rights and obligations of public employers to efficiently manage and conduct their operations within the legal limitations surrounding the financing of these operations."

The traditional considerations used by interest arbitrators in resolving impasses over wages assist arbitrators with the goal of respecting the strategies and unique obligations of public employers to efficiently manage and conduct their operations. They include consideration of the Employer's ability to pay, internal comparisons, external comparisons and the consumer price index.

Here the Employer has the ability to pay and has embarked on a course of action designed to ensure fiscal soundness for the foreseeable future. The Employer acknowledges that it has the ability to pay even though the 2004 financial statement was unavailable at the time of the hearing in this matter. The arbitrator is therefore required to rely on the 2003 financial statement which has been adequately summarized in the interest arbitration award issued by Arbitrator Miller in February 2005. Lyon County and Law Enforcement Labor Services, Inc., BMS Case No. 04-PN-1055 (Miller, 2005, p. 4)

The parties acknowledged that the Employer's financial condition is almost unchanged from the 2003 statement. This is true even though the Employer continues to point to its concern over the reduction in state aid which in turn might reduce the financial resources available to fund increases in wages. It, nevertheless, freely admits that it has the ability to pay the Union's wage proposal. The Employer is not concerned that the Union's wage proposal will result in non-compliance with the Pay Equity Act requirements.

The Employer's primary concern is with the integrity of its merit based pay system that it put in place in the early 1990's and has made every effort to protect in this and previous interest arbitrations. According to the Employer:

> "Consistency among all employee groups is of great importance in maintaining labor relations stability and maintaining the symmetry and integrity of the uniform County-wide merit pay system...The compensation package reflects the County's philosophical focus on rewarding employees for merit-based performance rather than providing employees with automatic general wage increases on the basis of continued service." (Employer Post-Hearing Brief at p. 4-5)

The Employer also argues and the arbitrator agrees that while the Deputies unit is the Employer's only organized employee group, the determination of the appropriate wage rate should be driven by a respect for the Employer's goal of maintaining internal consistency with regard to the payment of wages. This arbitrator will not disturb what appears to be an efficient philosophy and scheme with respect to the management of annual salary increases without some indication that it is undermining the financial standing of unit members as measured against some reliable benchmark.

Arbitrator Miller, for example, said that deviation from the Employer's scheme might be warranted if the Deputies drastically fall from the ranking or do not receive wage and/or merit increases close to the average of the comparable counties. (Id at p. 10) Miller noted that the Deputies were doing well as compared to their counterparts in Economic Region 8. Miller concluded that the "...wages for County Deputies in comparison to deputies in this comparability group are approximately 11.5% above the average in 2004 under the wage award) (Id.)

One year later, the Union requests deviation on the grounds that there has been a drastic fall by its members or in the alternative they did not receive wage and/or merit increases close to the average of their counterparts in Region 8. However, the data suggest otherwise. The Union acknowledges that its members received an average increase of 4.1% in 2005 with one receiving a 7.9% increase as a result of the merit system and a promotion. However, the Union argues that these averages are below what it sees as the average for the Region 8 group. The Union places that average at 6.8% to 7.7%. It does so by including the general increase provided deputies in those counties with settled agreements as well as steps. The data submitted to the arbitrator, however, shows that the average increase of deputies in Region 8 was 4.17% in 2005 and 3.25% in 2006.

Based on these numbers it is difficult to conclude that the Union's members have suffered a drastic fall from the ranking or that they did not receive wages or merit increases close to the average of comparable counties. Furthermore, the Employer's proposal places the minimum deputy hourly wage at $16.85 for 2005 as compared to the average hourly rate in Region 8 of $15.75. It places the maximum hourly wage for deputies at $23.59 as compared to average top rate $20.66 per hour. The Employer's 2006 wage increase proposal allows its Deputies to maintain a reasonable ranking in relation to their counterparts in Region 8. The Union argues that a fall from second to third in the rankings is drastic, however, the data does not support that conclusion. The arbitrator finds that the Deputies will not drastically fall from their ranking and will receive wage and/or merit increase close to the average of the comparable counties under the Employer's proposed wage increase. The arbitrator is mindful that adherence to internal consistency cannot be blind. As Arbitrator Martin said:

> "While internal comparisons are important, they should not be controlling in every case. To do so would not be to elevate negotiation as the principles of PELRA require. Rather it would permit employers to dictate wage increases whenever the Union has for some period agreed to employer internal patterns. PELRA does not intend to replace negotiation with Interest Arbitration, but neither does it intend to use interest arbitration to freeze patterns set initially by employers." Law Enforcement Labor Services, Inc. Local No. 76 and The City of Mendota Heights, BMS Case No. 01-PN-968 (2001)

Consistent with Arbitrator Martin's view, this arbitrator is not suggesting that the Union should be punished or locked into reliance on the internal consistency analysis of wage proposals simply because it agreed to the merit system during prior negotiations. More to the point, the arbitrator acknowledges that the Union has not, thus far, lost ground in a manner that suggest moving away from reliance on internal consistency as the driving force in evaluating the wage proposals at issue here. While the Employer's arguments regarding the impact on labor relations of awarding the Union's proposal are clearly overblown, it cannot be said that the Deputies here have drastically lost ground or have been undermined by the merit-based approach and reliance on internal consistency.

On the contrary, it appears that they have maintained their position and have the potential for doing so pending good performance in the upcoming year.

The arbitrator also finds the data relevant to the consumer price index to be useful to the extent that it shows the Employer's wage proposal and merit based system provides a reasonable process by which the Deputies can earn wages that keep pace with the increases in the cost of living. The Union's 4.1% increase is certainly very close to the 4.5% shown by the Union to be relevant to mid-west non-metropolitan communities.

ISSUE NO. 3: WAGES FOR 2006 - Appendix A

The Union requests a 3% general wage increase for 2006. The Employer requests a 0% general wage increase and a 2.0% increase in the merit ranges of the wage scale. Both sides repeat arguments made in support of their positions on the 2005 wage increase. The Union points again to the use of external factors in support of its position. The Employer points again to internal consistency as the primary factor to be considered in arriving at the appropriate award. However, the Employer granted its non-union employees a 2.5% increase.

AWARD:

The Employer's position is awarded except that the increase will be 2.5% rather than 2.0%.

RATIONALE:

For all of the reasons stated above, the arbitrator holds that the Employer's position with regard to 2006 should be sustained. However, it can only be sustained to the extent that it is consistent with the arguments put forth by the Employer with regard to the paramount importance of paying both union and non-union employees the same wage increase.

Also, at the time of this hearing only four of the other eight counties within the economic region had settled agreements for 2006. Therefore, our benchmark will not be as effective as it could be were more data available. The task will be for the parties to carefully assess whether there has been drastic slippage in 2006 as they prepare for the new round of bargaining. To the extent that the Employer's merit based system permits rapid advancement to the midpoint of the range and then slows, at some point given the length of service of its Deputies the system will have to make adjustments in order to avoid drastic slippage and to keep pace with the reasonable average increases within Region 8. For now, however, there is no evidence in light of the traditional factors to suggest the Employer's proposal is anything but reasonable.

ISSUE NO. 4: COURT TIME

Union's Position

The Union requested an increase in the minimum paid to deputies for court appearances on their scheduled off-duty time. Currently the Employer pays a deputy required to appear in court during scheduled off-duty time a minimum of two (2) hours pay at one and one-half (1 ½) times the deputy's base pay rate. The Union would like to increase the minimum paid to 2 ½ hours. The Union argued that these mandatory court appearances are unique to law enforcement and for deputies scheduled on the night shift requires them to give up sleep and/or make arrangements for child care as well as put on hold any activities they wish to pursue during their off-duty hours. The Union also argued that several counties in the state have recognized the inconvenience by giving a three hour minimum.

Employer's Position

The Employer wishes to retain current language which awards a two hour minimum at the overtime rate for all court appearances on the deputies' scheduled off-duty days. The Employer argues that the provision in the parties' Agreement dates back to 1980 and that the historical nature indicates that it is reasonable. The Employer further compares the minimum rate to that of sergeants, jailers and dispatchers to show that the current minimum rate should be retained. The Employer pointed out that the Sergeants receive a minimum of two hours at the overtime rate for similar appearances and the jailers/dispatchers do not receive a guaranteed minimum. The Employer also argued that the instances in which a deputy has been required to appear in court on an off duty day has remained constant over time. Finally the Employer compared the current court time language to that of the nine other counties in Region 8 to show that the current language should be retained. Within Region 8 only one county provides a three hour minimum. The Employer also said that the Court time language should be considered as part of the total economic package cost.

AWARD: The Employer's position is awarded.

RATIONALE

The arbitrator finds the comparison to other counties in Region 8 to be the most compelling evidence that the Employer's position is the proper one. Both sides urge the arbitrator to consider the comparable counties (Region 8) for different reasons throughout the hearing of this matter and in their respective post-hearing briefs. The arbitrator is convinced that the increase requested by the Union is not necessary for its members to maintain their position with regard to compensation and benefits within Region 8. In other words, the arbitrator reached the conclusion to accept the Employer's position on this issue following an examination of whether doing so would harm the unit's standing among their Region 8 peers.

Only one Region 8 county provides court time compensation similar to that requested by the Union here. Nobles County provides a minimum of three (3) hours pay at the overtime rate for its deputies who are required to attend court during their scheduled off-duty hours. The other counties within Region 8 provide the same as Lyon County or an equivalent amount.

ISSUE NO. 5: CALL BACK

Union's Position

The Union requested a change in existing language that would increase the rate of pay for deputies called back to work during their scheduled off-duty time. Currently, deputies called back to duty during their scheduled off duty time receive two hours pay at the overtime rate. The Union wants to increase that to 2 ½ hours pay at the overtime rate. The Union argued that the trend in law enforcement is to increase call back pay from 2 hours at time and one-half to three hours at time and one-half, or 4 hours straight time.

Employer's Position

The Employer's position with respect to call back time is essentially the same as that described above for court time. The Employer pointed out that of the nine Counties within Region 8 none provide call back in excess of two hours at the overtime rate of pay.

AWARD: The Employer's position is awarded.

RATIONALE:

The arbitrator as stated above believes the proper determination of this issue requires an examination of the call back pay provided to deputies within the other counties of Region 8. The majority of the counties within Region 8 pay a minimum of two hours at the overtime rate (one and one-half the base pay rate.) The ones that have a different pay scheme for call back provide pay substantially equivalent to that provided by the other counties. There is no reason to deviate from that course in this interest arbitration. The trend in law enforcement as determined by the Union's examination of all of the counties in the state does not provide useful data with regard to the proper course of action to be taken within Region 8 and in Lyon County in particular. Lyon County is in step with the statewide trend in that it provides an appropriate level of call back pay. Other than that, consideration of the statewide pattern does not help us determine whether the increase requested by the Union is proper. Neither side provided data summarizing the usage of this call back language. Such data might have shed some light on whether there is a trend upward or downward with regard to the Employer's reliance on its right to call deputies to duty during their scheduled time off. Such data might also provide a clearer picture as to the impact of an increase or failure to grant the same on the overall wage award. That is the kind of data that might prove useful to a determination of whether an increase is warranted. Without more detailed or compelling information the arbitrator is inclined to see the parties revisit the issue during the next round of bargaining hopefully with sufficient data to might make those discussions more fruitful.

ISSUE NO. 6: SUBCONTRACT

<u>Union's Position</u>

The Union requested deletion of the language regarding the Employer's right to subcontract bargaining unit work. The Union argued that Lyon County is the only one in Region 8 that has the right to subcontract bargaining unit work.

<u>Employer's Position</u>

The Employer opposes deletion of the subcontracting language on the grounds that the provision is historical. The Employer maintains that it does not intend to subcontract the work of the Deputies or diminish the workload of bargaining unit members.

AWARD: **The Union's position is awarded.**

RATIONALE:

Arbitrators typically look for a compelling reason to change the parties Agreement. Arbitrator Wallin described this view saying:

> "Accordingly, the proponent of such change bears a heavy burden of persuasion. The evidence and arguments in support of the change should be compelling. Often times, however, such changes come about in negotiations as a quid pro quo for some other concession. Accordingly, if evidence in support of a significant structural change is not compelling in its own right, the evidence in support of the changes should also provide a clear indication of what the negotiating parties would have deemed to be an appropriate trade-off. Absent such strong evidence in support of innovative or structural change, demands of this nature should ordinarily be rejected by the arbitrators and left to the parties to resolve in future rounds of collective bargaining negotiations." <u>Law Enforcement Labor Services Inc. And City of Winona</u>, BMS 96-PN-2056 (1977)

Here, the Union did not provide a compelling reason for this change. The change, however, is not a significant one and certainly does not represent a structural change in the parties' Agreement and relationship. As the Employer noted the subcontracting language was accepted in negotiations by the LELS during its first round of bargaining as the newly elected exclusive representative of Lyon County Deputies. The Union now seeks to change that language. The mere fact that language has been in the Agreement for a long time does not in and of itself shield it from change during interest arbitration.

In the give and take of bargaining, the subcontracting language might indeed have been traded by the Employer for its wage proposal and insistence on the structural significance of maintaining internal consistency with respect to the payment of wages to its union and non-union employees. This is especially true in light of the Employer's convincing argument that it "has not in the past sought to subcontract the work of the Deputies bargaining unit or diminish the workload of the bargaining unit members, and there is no intent on the part of the County to do so in the future." Such an admission renders the language useless as a matter of fact. Therefore, its removal from the Agreement poses no harm to either side and does not disturb the structural integrity of the Agreement.

There are currently nine deputies within the bargaining unit. Three of those deputies are new hires. The Employer has indeed chosen to increase the ranks rather than subcontract the work when faced with attrition or an increase need for services. The arbitrator is mindful that any Employer wants to hold onto all of the chips available to it just in case the economic picture changes drastically. However, in the give and take of bargaining, the arbitrator believes this provision to be one the Employer would have traded in exchange for adherence to its philosophy of rewarding performance rather than granting automatic wage increases. The removal of the subcontracting language should provide a sense of security to unit members that the work will remain within the unit. Removal of the subcontracting language simply wipes out language the Employer agreed it has no intention of using.

ISSUE NO. 7: HOLIDAYS

Union's Position

The Union wishes to retain current language regarding holidays. The Union argued that the Columbus Day holiday has been a named holiday since 1999 and a named holiday for non-union employees since at least 1995. Deputies currently get another day off and receive time and one-half pay for working on Columbus Day. The Union said five of the nine counties in Region 8 have Columbus Day as a named holiday.

Employer's Position

The Employer wants to replace Columbus Day with an additional floating holiday. The Employer pointed out that the non-union employees receive the same number of holidays but do not receive Columbus Day. Instead, the non-union employees receive an additional floating holiday. The Employer argued that removing Columbus Day as a holiday would actually provide Deputies with more scheduling flexibility. The Employer pointed out that the majority of Region 8 counties provide 11 paid holidays. The Employer said the data is split on whether Columbus Day is included in the list of paid holidays provided by Region 8 counties.

AWARD: **The Union's position is awarded.**

RATIONALE:

The arbitrator finds that to adopt the Employer's position would be to essentially provide a cut in pay to the Deputies. In light of the award regarding wages for 2005 and 2006, the arbitrator finds that there is no justification for changing the Columbus Holiday as requested by the Employer. Furthermore, five of the nine counties in Region 8 include Columbus Day as a named holiday. Resort to the Region 8 economic group for resolution of this issue is more appropriate than examining the holidays granted to Employer's non-union employees. The Columbus Day holiday has been in the Agreement since 1999 and represents a structural component of the compensation package. It should not be altered without a compelling reason.

ISSUE NO. 8: INSURANCE

Union's Position

The Union proposes to retain current language regarding insurance. The current language requires the Employer to provide health, life, and dental insurance for all full-time employees and to pay up to a maximum of sixty percent (60%) of the cost of dependent coverage for all full-time employees choosing dependent coverage. The Union argues that the language proposed by the Employer would take away the right of the Union to negotiate over health insurance. The Union also pointed out that it did not understand the terms of the cafeteria plan introduced by the Employer. Finally, the Union argues that there is no compelling reason to change or alter the language.

Employer's Position

The Employer proposed to replace current insurance language with the following language:

> "The Employer will contribute the same amount as that contributed for the County's non union employees toward the health, life and dental insurance cafeteria plan for full-time employees."

The Employer said it seeks internal consistency with regard to the insurance benefits for union and non-union employees. It wants all employees to be "impacted and benefited" in the same manner. The Employer said that its 2005 and 2006 cafeteria contribution amount exceeds the premium for single coverage and employees with single coverage receive additional money to purchase extra coverage or to pay for unreimbursed medical expenses.

The Employer said its cafeteria contribution amount for employees with family coverage is close to the 60% contribution it currently provides to union members requiring family coverage. The Employer maintains that if awarded the new contract language would provide union members with flexibility and greater savings.

AWARD: The Union's position is awarded.

RATIONALE:

Based on the testimony at the hearing of this matter, the arbitrator is convinced that to the extent the parties engaged in bargaining over the insurance issue those discussions failed to yield an understanding of the pros and cons of the Employer's proposals. The Employer pointed out that the parties had only one opportunity to discuss its insurance proposal. In addition to the lack of understanding resulting from the limited examination of this issue during bargaining, the arbitrator is convinced that a change of this nature cannot be based solely on the Employer's desire to advance internal consistency with regard to the insurance burden and benefits of its union and non-union employees. The balance of the Employer's workforce is unorganized and is not allowed to engage in bargaining with regard to changes in terms and conditions of employment. The arbitrator prefers returning this issue to the parties for a detailed examination of the "flexibility and greater savings" provided by the proposed language in their next round of bargaining. It is difficult to imagine the Union being uninterested in flexibility and savings. However, current language provides a simple understanding of the benefit to unit members as well as the Employer's obligation. With greater choice often comes greater confusion. The arbitrator does not wish to impose this confusion upon unit members in blind adherence to internal consistency.

The adherence to internal consistency, in this instance, should at least follow proof that the issue has been thoroughly examined by the parties during bargaining. Based on the testimony, confusion exists as to the impact of the proposed language to benefit levels for unit members. As importantly, to the extent that the Employer's insurance proposal includes an increase, even a minimal one, in the employee's contribution to the cost of the health care, it must be considered in light of the wage awards discussed above. To grant the Employer's requested change might in effect result in the lowering of the wage increase granted above. The Employer provided sufficient information to demonstrate that the cost to unit members, for at least the family coverage under its proposed language would actually increase. Here again, the language proposed by the Employer represents a significant structural change to the parties Agreement and must be based on compelling evidence. The Employer did not provide a compelling reason to deviate from current language.

ISSUE NO. 9: SHIFT DIFFERENTIAL

Union's Position

The Union is proposing new shift differential language. The parties recently expired Agreement does not contain shift differential language. The Union proposed a shift differential of twenty-five ($.25**)** cents per hour for all hours worked between 6:00 p.m. and 6:00 a.m. The Union argues that 53 of 87 Minnesota counties provide an hourly shift differential. The Union also said that the approximate average amount of the shift differential provided by the 53 counties is fifty-nine ($.59) cents per hour.

Employer's Position

The Employer opposes new language regarding shift differential pay. The Employer argues that the Union has failed to put forth a compelling reason to change the long-standing absence of shift differential language from the agreement. The Employer further pointed out that the Deputies enjoy an extremely favorable schedule since the recent adoption of 10 hour shifts on a trial basis. The Deputies do not work between the hours of 3:00 a.m. and 7:00 a.m. Further, the Employer pointed to the fact that none of its law enforcement employees receive a shift differential. Finally, the Employer pointed to the fact that seven of the nine counties in Region 8 do not provide shift differential pay.

AWARD: The Employer's position is awarded.

RATIONALE:

As noted above with regard to the call back, court time and holiday awards, the examination of this issue requires resort to a consideration of the manner in which other Region 8 counties treat the issue of shift differential pay. The Union's resort to statewide data with regard to this issue is not helpful. Of the Region 8 counties, only two provide for shift differential pay. It is significant that the Deputies here rank third in compensation behind those of Cottonwood and Jackson counties. It is more likely that Pipestone and Rock counties, the two that provide shift differential pay, arrived at that result due to negotiations or as a result of circumstances unique to their bargaining relationship. To the extent that the Deputies here suffer setbacks in their ranking with respect to compensation as compared to their Region 8 counterparts, the issue of shift differential may occupy a more prominent position in future rounds of bargaining.

A. Ray McCoy **February 22, 2006**
Arbitrator **Date**

IN THE MATTER OF
ARBITRATION BETWEEN

Law Enforcement Labor Services, Inc.
Union

and

Lyon County
Employer.

BMS Case No.: 05-PN-1168
<u>Request for Clarification</u>
LELS and Lyon County
Interest Arbitration Award
Issued: February 22, 2006

INTRODUCTION

The undersigned arbitrator issued an award in the above-referenced interest arbitration dated February 22, 2006. By letter dated February March 2, 2006, the Union requested clarification of the arbitrator's award. The Union said:

> "Your award states under Issue #3, Wages For 2006 - Appendix A: "The Employer's position is awarded." You refer to a 2% increase in the merit range. At arbitration, the County Representative indicated the County had given a 2.5% increase in the merit range. The Union believes you intended LELS members receive the same 2.5% as all other county employees."

The Employer submitted its objections to the Union's request by letter dated March 8, 2006. The Employer argued as follows:

> "The Union has indicated it believes the Arbitrator intended the LELS members receive the same 2.5% increase as all other County employees. The Union phrased its request in terms of a clarification of the award. Any clarification of the award which results in a substantive change of the merits of the award constitutes an improper modification of the award. Minn. Stat. _572.16 provides that the basis for modification of an arbitrator's award, but only for the grounds set forth in Minn. Stat. _572.20, subd. 1, for the purpose of clarifying an award, or where the award is based on an error of law. The grounds stated in Minn. Stat. _572.20, subd. 1 are limited to mistakes in calculation, description or form. Any deviation from the merits of the award goes far beyond clarifying the award.
>
> The 2006 wage award requires no clarification on the part of the Arbitrator. The award indicates, "The Employer's position is awarded." The Employer's final position for 2006 wages was "0.0% general wage increase for 2006. The performance merit ranges shall be increased by 2.0%. See attached

> Appendix B." Employer Exhibit 3. The Employer's written narrative and exhibits clearly set forth the fact that for 2006, the increase to the performance merit range for non-union employees was 2.5% with no general increase. Employer presentation p. v-2, _4.b; Employer Exhibit 22. The fact that the County's 2006 final position was different than the County pattern was reiterated in Employer Exhibits 25 and 41. The Employer's position of a 2.0% increase to the performance merits ranges was awarded, and the award requires no clarification."

DISCUSSION AND HOLDING

Minn. Stat. _572.16 permits an arbitrator to clarify an award upon application of a party. Minn. Stat. _572.20 specifically provides three circumstances under which the arbitrator may modify or correct the award. The first is upon the grounds stated in Minn. Stat. _572.20. The second is for the purpose of clarifying the award and the third is where the award is based on an error of law. It is necessary to clarify/modify this award due to a mistake in description and form on the part of the arbitrator. The Union correctly noted that the arbitrator's determination that the Employer's position should be awarded is based on the acceptance of the Employer's arguments at the hearing in this matter that its goal of maintaining internal consistency between union and non-union employees with respect to compensation was paramount and even critical to its overall budget and labor relations. In fact, the Employer convincingly argued:

"Consistency among all employee groups is of great importance in maintaining labor relations stability and maintaining the symmetry and integrity of the uniform County-wide merit pay system." (Employer Post-Hearing Brief at p. 4, Emphasis added)

The arbitrator was convinced that it was the Employer's purpose and long-term plan to continue to provide the same increases to the merit range for both union and non-union employees. Moreover, the Employer opposed the Union's pay equity arguments for, among other reasons, that to accept the Union's position would "**alter the symmetry of the County's uniform merit-based compensation system."** (Id. a p. 5, Emphasis added)

Furthermore, the Employer specifically pointed to the previous interest arbitration award of Arbitrator Miller in pressing its case that the instant award should mirror prior interest arbitration awards involving the parties. The Employer quoted the following language from Arbitrator Miller's award:

...The Parties have historically since 1996 adhered to a past practice of every County employee, including all members of this unit, receiving the same wage increase. (Id at p. 4, Emphasis added by Employer)

Finally, the Employer not only refrained from explaining the difference in the merit increase for its union and non-union employees for 2006 but actually highlighted its position that providing its union and non-union employees the same increase for both years was what it wanted the arbitrator to award. The Employer argued:

> "The County submits that none of these factors supports the Union's position. Rather each of these factors **favors an award of the County-wide uniform merit pay system."** (Id at p. 1, Emphasis added)

The argument put forth by the Employer with regard to the absolute and paramount importance of maintaining internal consistency with regard to merit increases is what the arbitrator awarded. The arbitrator, in an attempt to meet the 30-day deadline for issuing the award simply failed to bring forth from notes taken at the hearing and during review of the briefs in this matter that reflected the discrepancy. As the Union pointed out in its brief, the Employer did inform the arbitrator at the hearing and in its written materials that the non-union employees were granted a 2.5% increase. The Employer, however, did **not** put forth a rationale for wanting to grant the non-union employees more than the union employees. In fact, the Employer only emphasized its desire to provide the same increase to its union and non-union employees.

This clarification does not change the substance of the award intended by the arbitrator. It simply clarifies what the arbitrator meant by awarding the Employer's position with regard to the 2006 wage award. This error is no different from a clerical error. The arbitrator agreed to the Employer's request that its goal of treating union and non-union employees the same be protected. However, the arbitrator failed to reflect that specifically by stating that the Union's 2006 increase in the performance merit ranges would be 2.5% rather than 2%. This is simply an error in the form that the arbitrator used to describe his award.

As far as the arbitrator is concerned, everything about the rationale provided with respect to the award of the Employer's position on the 2006 wage increase points to an intent to make sure both union and non-union employees receive the same increases for both 2005 and 2006.

To suggest otherwise would render meaningless all of the Employer's arguments with regard to the importance of internal consistency. The only way to make sense of the discrepancy between awarding non-union employees 2.5% and the union employees 2.0% is to acknowledge that the arbitrator understood the Employer position to be that both groups would receive the same increase. If the Employer is saying it never intended to treat these two groups the same then everything the arbitrator understood to be of critical importance to the Employer should be cast aside. The only way to reconcile the discrepancy is to recognize that it is a simple error on the part of the arbitrator and that it does not change the substance of the award. Here, the substance of the award is the protection of the Employer's "**uniform merit pay system**."

HOLDING

Based on the foregoing, the arbitrator will reissue the decision consistent with the clarification provided above. The Employer's position with regard to 2006 wages is awarded. That position, consistent with the discussion above, is that the 2006 performance merit ranges will increase by 2.5% for both union and non-union employees. The decision is hereby reissued consistent with this clarification.

A. Ray McCoy Date: March 10, 2006
Arbitrator